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UBER TECHNOLOGIES, INC.,
RASIER, LLC, and RASIER-CA, LLC

[Additional Counsel Listed on Following Page]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE: UBER TECHNOLOGIES, INC.
PASSENGER SEXUAL ASSAULT
LITIGATION

3:23-MD-3084-CRB

**DECLARATION OF PHILIP FAVRO IN
SUPPORT OF DEFENDANTS UBER
TECHNOLOGIES, INC., RASIER, LLC, AND
RASIER-CA, LLC'S PROPOSED ESI
PROTOCOL**

This Document Relates to:

ALL ACTIONS

Judge: Hon. Charles R. Breyer
Courtroom: 6 – 17th Floor

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7 UBER TECHNOLOGIES, INC.,
RASIER, LLC, and RASIER-CA, LLC
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1 I, Philip J. Favro, declare pursuant to 28 U.S.C. § 1746:

2 1. I am over the age of 18 and a resident of the State of Utah. I submit the instant
3 declaration in support of Defendants Uber Technologies, Inc., Rasier, LLC, and Rasier-CA, LLC's
4 (collectively "Uber") Proposed ESI Protocol.

5 **I. CREDENTIALS**

6 2. I am a Principal Consultant for Innovative Driven, an international electronic
7 discovery consulting firm. I am also an attorney licensed to practice law in the States of California
8 (1999) and Utah (2011). If called to do so, I could and would competently testify to the statements
9 and opinions in this declaration. My Curriculum Vitae is attached hereto as Exhibit "A."

10 3. I am a nationally recognized expert in the field of electronic discovery. My
11 expertise has qualified me to serve in court-appointed neutral roles—including as a special
12 master—on issues relating to electronic discovery and electronically stored information ("ESI").
13 In my role as a court-appointed neutral, courts have tasked me with (among other things)
14 addressing issues arising from the production of documents found on cloud sites like Google Drive,
15 including whether those documents should be produced in family relationships with the
16 communications referencing those documents.

17 4. I offer expert testimony and consulting services in the areas of data preservation
18 practices, litigation holds, data collection strategies, search methodologies for ESI, security and
19 privacy considerations regarding discovery of ESI, and protocols regarding the preservation,
20 identification, and production of relevant ESI. I am one of the field's leading scholars on issues
21 relating to the discovery process and the confluence of litigation and technology. Federal and state
22 courts and academic journals have cited my articles. In addition, I regularly provide training to
23 judges throughout the country on ESI and electronic discovery.

24 5. I belong to The Sedona Conference, have served as a member of the Steering
25 Committee for Working Group One (Electronic Document Retention and Production), and
26 continue to be an active participant in the organization. The Sedona Conference is the preeminent
27 legal institution dedicated to advancing thoughtful reforms on important legal issues. The
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1 organization is best known for its work on electronic discovery. The authoritative resources it
2 prepares—many of which I have helped to develop—are regularly cited by courts throughout the
3 nation as instructive on issues relating to electronic discovery.

4 **II. PURPOSES AND SUMMARY OF DECLARATION TESTIMONY**

5 6. I have been engaged by Uber to offer the instant declaration in support of its
6 proposed ESI protocol. The purpose of my declaration is to provide the Court with contextual
7 understanding regarding: (1) The differences between traditional attachments and hyperlinked
8 content from cloud sites like Google Drive; and (2) the complexities with producing hyperlinked
9 documents stored in Google Drive.

10 7. It is my opinion—based on my collective experience dealing with ESI as a court-
11 appointed special master, legal counsel, expert witness, and an ESI and electronic discovery
12 consultant—that hyperlinked documents are not analogous to traditional attachments; that the
13 differences between hyperlinked documents and traditional attachments may cause a responding
14 party like Uber to incur significant discovery burdens; and that the technological limitations of
15 Google Workspace may prevent Uber from producing the version of a hyperlinked document
16 stored in Google Drive that was actually shared in an email.

17 **III. HYPERLINKED DOCUMENTS ARE NOT ANALOGOUS TO EMAIL ATTACHMENTS**

18 8. Before the advent of cloud computing, users generally exchanged documents over
19 email or other forms of electronic communication by attaching the actual file generated on locally
20 hosted applications for word processing, spreadsheets, and presentations. In addition, users could
21 attach portable document format (“PDF”) documents, along with other static or editable file types.
22 Irrespective of whether those file types were static (such as a PDF) or could be edited (like
23 documents generated on applications such as Microsoft Word, Excel, or PowerPoint), neither
24 senders nor recipients could modify the contents of the document in its state of being attached to
25 the email. As long as the email was retained, the attachment and its content would remain in a
26 fixed format. To make changes to the document, senders or recipients would have to open the
27 attachment and save it somewhere (albeit a local hard drive or an on premise server) as a new file.

1 Senders could also modify the original file, which was saved before attaching it to a
2 communication. The inextricably intertwined nature of email and attachments—considered a
3 “logical single communication of information, but consisting of more than a single stand-alone
4 record”—led The Sedona Conference to define this relationship as a “Document Family.” *The*
5 *Sedona Conference Glossary: eDiscovery & Digital Information Management, Fifth Edition*, 21
6 SEDONA CONF. J. 263, 299, 304 (2020).

7 9. With the proliferation of Google Workspace and Microsoft 365—which provide
8 cloud-based versions of word processing, spreadsheet, and presentation applications—I have
9 observed that users frequently collaborate on documents now by sharing a hyperlink to the file
10 rather than the document itself. Files shared in the form of a hyperlink from cloud sites are
11 colloquially referred to by a variety of terms including, but not limited to, “hyperlinked
12 documents,” “linked documents,” “pointers,” “cloud attachments,” and “modern attachments.”

13 10. Unlike traditional attachments, which remain unaltered so long as the underlying
14 electronic communication is preserved, hyperlinked documents can be edited by senders,
15 recipients, or any other person who has access to the cloud site where the hyperlinked documents
16 are maintained. Hyperlinked documents benefit enterprises by ostensibly enabling users to
17 collaborate and keep one master copy of a document and thus offer the potential for maintaining a
18 centralized record.

19 11. For these reasons, the relationship between a communication and hyperlinked
20 documents has not achieved “Document Family” status. Unlike emails and their corresponding
21 attachments, hyperlinked documents are merely a “pointer” or “shortcuts to other documents or
22 views” and they direct recipients “to another location either within the current document or to
23 another location accessible on the network or internet.” *Id.* at 319.

24 12. I have observed that the differences between attachments and hyperlinked
25 documents for purposes of discovery are significant and that hyperlinked documents are not an
26 analog, nor a mere technological extension, of traditional email attachments.

1 13. For example, I have found—other than potentially limited individual instances
2 involving manual searches—that enterprises may not be able to collect the precise iterations of
3 hyperlinked documents referenced in communications if the senders, recipients, or other users with
4 appropriate access to the cloud site have modified those documents. In contrast, traditional
5 attachments will retain their same content and remain in fixed and static forms so long as their
6 underlying communications are preserved.

7 14. I have also observed that a hyperlink to one document may be embedded as a linked
8 document in several different electronic communications. This “one to many” paradigm can create
9 additional production complications if the process of matching the underlying communications
10 with the contemporaneous version of the hyperlinked document is not automated by the user’s
11 cloud services provider. This is not the case with emails and attachments where an enterprise—
12 even if there are multiple attachments—can generally use its eDiscovery platform to seamlessly
13 automate and retain the contemporaneous relationship between those documents.

14 15. I have found that these differences (and others) between traditional attachments and
15 hyperlinked documents can result in a significant disparity in burdens for a party responding to
16 discovery and who has been requested or ordered to produce documents in family relationships.

17 16. With traditional attachments, responding parties have access to eDiscovery
18 platforms that offer turnkey, automated functionality to seamlessly produce emails and other
19 communications with their corresponding attachments in family relationships. I have observed that
20 the costs and delays of ensuring traditional attachments are produced in family relationships are
21 typically nominal because the process has been automated and does not involve manual efforts to
22 connect emails and attachments. I have also found that the facility with which responding parties
23 can produce traditional attachments in family relationships has resulted in family production
24 provisions regarding traditional attachments becoming standardized in stipulated ESI protocols.

25 17. In contrast, hyperlinked documents, by their very nature, can create identification
26 challenges and review inefficiencies for responding parties given the difficulty of connecting the
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1 contemporaneous version of a hyperlinked document with the communication or communications
2 that reference that document.

3 **IV. TECHNOLOGICAL LIMITATIONS WITH GOOGLE VAULT IMPACT UBER’S ABILITY TO**
4 **IDENTIFY, COLLECT, EXPORT, AND CONNECT CONTEMPORANEOUS VERSIONS OF**
5 **HYPERLINKED DOCUMENTS**

6 18. This is particularly the case for Uber, which is a user of Google Workspace. Google
7 Workspace hosts Google’s products and services including Google Vault, which can act as a
8 clearinghouse to facilitate the processing of data for discovery purposes, and Google Drive, a cloud
9 site where users can create and store documents.

10 19. From what I have observed, Google Vault does not currently offer a fully automated
11 process through which Uber can export, collect, or connect the contemporaneous versions of
12 hyperlinked documents with the corresponding emails in which they are found.

13 20. Producing hyperlinked documents in “family” relationships—as I understand
14 plaintiffs are requesting in this instance—would require Uber to collect and identify the
15 hyperlinked documents at issue and then match up those documents with the communications-that
16 reference the pointers to the hyperlinked documents.

17 21. Once Uber has collected the Google Drive documents using Google Vault, I
18 understand that Uber’s established process—working with its eDiscovery service provider—is to
19 extract the hyperlinked document identifiers from the collected emails and run those collected
20 identifiers against the population of collected Google Drive documents to try to identify the
21 matching hyperlinked documents within the documents collected from Google Drive. Uber then
22 can create a relationship between the email and the hyperlinked document that is represented in a
23 custom metadata field in its service provider’s review database. All of which enables Uber to
24 generate a metadata association connecting the underlying emails and the hyperlinked Google
25 Drive documents.

26 22. However, I have observed that Google Vault has technological limitations that
27 prevent Uber from exporting the contemporaneous version of a Google Drive document associated
28 with the specific email containing the hyperlink pointer to the document. When conducting an

1 export of Google Drive files—particularly a large export over a period of years—Uber typically
2 exports the versions of those documents as they exist at the time of collection. In order to collect
3 a historic version of a Google Drive document contemporaneous with an email, Uber would have
4 to deviate from its established process. Uber would have to identify the date of the email in
5 question in an attempt to locate the linked Google Drive document. Using the date of the email,
6 Uber would next conduct a manual search in the revision history of that Google Drive document
7 to “preview and export the contents of the last version saved before 12:00 AM on the specified
8 date.” *Use Vault to search Google Drive, Meet, and Sites*, Google Vault Help (2024),
9 [https://support.google.com/vault/answer/7654308?hl=en&sjid=14226427622624487336-NA#](https://support.google.com/vault/answer/7654308?hl=en&sjid=14226427622624487336-NA#zippy=%2Csearch-within-the-revision-history-of-a-file)
10 [zippy=%2Csearch-within-the-revision-history-of-a-file](https://support.google.com/vault/answer/7654308?hl=en&sjid=14226427622624487336-NA#zippy=%2Csearch-within-the-revision-history-of-a-file). While other cloud storage platforms may
11 offer users the ability to capture both the current version of the document as a part of a scalable
12 process, along with the version contemporaneously exchanged by email (*see Collect cloud*
13 *attachments in Microsoft Purview eDiscovery (Premium)*, MICROSOFT (Oct. 1, 2023),
14 <https://learn.microsoft.com/en-us/purview/ediscovery-cloud-attachments>), Google Vault does not.

15 I declare under penalty of perjury that the foregoing is true and correct.

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17 Executed on February 12, 2024



18 Philip Favro
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EXHIBIT A



PHILIP J. FAVRO

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linkedin.com/in/philip-favro-b1a27ba/ | @philipfavro

PROFILE

Philip Favro is a leading expert on issues relating to electronically stored information. Phil serves as a court-appointed special master, expert witness, and trusted advisor to law firms and organizations on matters involving ESI and electronic discovery. He is a nationally recognized scholar on electronic discovery, with courts and academic journals citing his articles. Phil also regularly provides training to judges on electronic discovery and ESI. He is a licensed attorney who in private practice represented organizations and individuals in litigation across the spectrum of business disputes. In addition to handling a range of complex and other discovery issues, Phil has extensive experience in the courtroom including summary judgment, preliminary injunction, and discovery motion practice, together with trial and arbitration experience.

PROFESSIONAL EXPERIENCE

INNOVATIVE DRIVEN

12/15–Present

PRINCIPAL CONSULTANT, DISCOVERY AND INFORMATION GOVERNANCE

Court-Appointed Special Master. Serve as a court-appointed special master in matters involving ESI and electronic discovery. Address issues across the range of discovery disputes including ESI preservation, collection, search, review, production, and spoliation. Broker agreements with the parties on disputed issues, hold hearings and conferences, examine and weigh evidence, assess witness credibility, and author orders, reports, and recommendations relating to the disposition of legal and factual issues and privilege claims.

Expert Witness and Rule 30(b)(6) Witness. Offer expert testimony on issues relating to electronic discovery including appropriate steps and methods for handling the preservation of relevant information, the duty to conduct a reasonable inquiry, the proper use and development of search methodologies and analytics tools including technology-assisted review (TAR), the use of ESI protocols, the role of sampling to satisfy production obligations, the importance of metadata, and safeguarding privileged information and work product. Also provide Rule 30(b)(6) testimony on behalf of organizations regarding discovery and information topics.

Consultant to Law Firms and Organizations. Act as a trusted advisor to organizations and law firms on issues regarding discovery and information governance. Provide guidance on data preservation practices, litigation holds, data collection strategies, and search methodologies for electronically stored information. Offer direction on records retention policies, litigation hold policies, and the need to manage dynamic sources of information found on social media, messaging applications, and smartphones.

eDiscovery Legal Scholar. Am one of the leading scholars on issues relating to ESI and electronic discovery. Federal and state courts and academic journals (University of Pennsylvania Law Review, Notre Dame Law Review, and Cornell Law Review) have cited my articles.

Ephemeral Messaging Expertise. Am one of the foremost experts on ephemeral messaging and consult with clients regarding its impact on discovery obligations and corporate information governance programs. This includes helping address preservation duties in civil discovery, complying with regulators who discourage ephemeral messaging use, preparing policies regarding the implementation of ephemeral messaging, and guiding the selection of technologies. Am one of the leading thought leaders on these issues and served as the Editor-in-Chief for The Sedona Conference *Commentary on Ephemeral Messaging*, 22 SEDONA CONF. J. 435 (2021).

PHILIP J. FAVRO, CURRICULUM VITAE

philip.favro@innovatedriven.com

RECOMMIND, INC.

01/14 to 09/15

SENIOR DISCOVERY COUNSEL

Consultant & Legal Scholar. Served as consultant for lawyers, organizations, and judges regarding key developments, trends, and best practices in litigation, electronic discovery, information governance, and data protection. Authored scholarly articles and industry pieces relating to electronic discovery and information governance.

SYMANTEC CORPORATION

02/11 to 08/13

SENIOR DISCOVERY COUNSEL

Consultant & Legal Scholar. Provided guidance to organizations' in-house counsel regarding best practices for electronic discovery, data protection, and information governance. Shared strategies for reducing inefficiencies and costs, maximizing information, and satisfying legal strictures. Developed articles and analyses regarding int'l data protection laws. Authored scholarly articles and other writings on electronic discovery and information governance.

SANTA CLARA COUNTY SUPERIOR COURT

02/10 to 08/12

JUDGE PRO TEM, TRAFFIC DIVISION

Arraignments. Presided as pro tem judicial officer at arraignment proceedings for traffic-related infractions and misdemeanors. Entered pleas, set matters for trial, and assigned fines or other penalties.

Trials. Conducted trials as pro tem judicial officer for traffic-related infractions and misdemeanors. Received and weighed oral/written evidence from police officers and defendants, entered findings, imposed fines or other penalties, and/or dismissed matters.

Appeals. Prepared written record of proceedings of traffic trials subject to appeal.

PACKARD, PACKARD & JOHNSON

02/06 to 08/10

SENIOR COUNSEL (LITIGATION)

High Stakes Litigation. False Claims Act litigation practice focused on pursuing high stakes procurement fraud cases with the U.S. Department of Justice. Represented clients in matters that culminated in settlements between the Department of Justice and various defendants in a total amount exceeding \$300 million.

Discovery Practice. Successfully litigated discovery motions that enabled clients to obtain key documents supporting their claims and allegations of procurement fraud. Prepared initial disclosures, handled FRCP 26(f) obligations, reviewed ESI, conducted meet and confers, prepared discovery motions, and conducted follow-up consistent with discovery orders.

Firm eDiscovery Practice Leader. Directed the firm's electronic discovery practice. Trained government attorneys, federal investigators, firm lawyers, and document reviewers regarding the discovery of ESI. Supervised production, receipt, and analysis of millions of pages of ESI.

HOPKINS & CARLEY, A LAW CORPORATION

09/99 to 02/06

ASSOCIATE (LITIGATION)

Business Litigation. Business litigation practice concentrated on advising organizations regarding commercial contract, trademark, trade secret, partnership, and employment disputes. Obtained summary judgment and writs of attachment orders; handled pleadings, discovery, pre-trial motion practice, and expert discovery. Participated

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as counsel in trial regarding IP dispute in U.S. District Court, Northern District of California.

Discovery Practice. Managed discovery efforts as lead associate on a professional malpractice dispute involving \$300 million in alleged damages against an international accounting firm. Engaged in motion practice, supervised production of millions of pages of electronic and paper records, and advised client regarding other complex discovery issues. Handled motion practice, depositions, written discovery, and related tasks in various other cases.

HON. JEREMY FOGEL, U.S. DISTRICT JUDGE (N.D. CAL.)
JUDICIAL EXTERN

08/98 to 01/99

Legal Research and Writing. Performed legal research and analysis, prepared memoranda, and drafted proposed orders under the direction of the Judge Fogel and his law clerks.

Education

Santa Clara University School of Law, Santa Clara, CA

DEGREE: Juris Doctor | 1999

- Emery Academic Merit Scholar | 1997-99
- Member, Honors Moot Court Board | 1998-99
- Dean's List | 1997

Brigham Young University, Provo, UT

DEGREE: Bachelor of Arts, Political Science | 1994

- Spanish Minor
- Dean's List

Licenses

Utah State Bar, Lawyer

- 2011—Present

California State Bar, Lawyer

- 1999—Present

Professional Associations & Rankings

Georgetown Law Advanced eDiscovery Institute—(2023—Present)

- Advisory Board Member

Seventh Circuit Bar Association—(2023—Present)

- Honorary Member
- Associate Editor, *The Circuit Rider*

Chambers and Partners—(2019—Present)

- Chambers-Ranked Lawyer, Band 1 USA-Nationwide Litigation Support/eDiscovery (2023—Present)
- Chambers-Ranked Lawyer, Band 2 USA-Nationwide Litigation Support/eDiscovery (2019—2022)

The Sedona Conference—(2011–Present)

- Member, WG1 Steering Committee (Electronic Document Retention & Production) (2019-2021)
- Project Manager, WG1 Steering Committee (2017-2019)
- Editor-in-Chief, *Commentary on Ephemeral Messaging* (2021)
- Editor-in-Chief, *Commentary on the Effective Use of Federal Rule of Evidence 502(d) Orders* (2021)
- Editor-in-Chief, *Commentary on ESI Evidence & Admissibility, Second Ed.* (2020)
- Editor-in-Chief, *Primer on Social Media, Second Ed.* (2019)
- Drafting Team Leader, *Commentary on Proportionality in Electronic Discovery, 3rd Ed.* (2017)

Utah State Bar Litigation Section—(2018–2023)**Central Utah Bar Association**—(2014–2023)**Coalition of Technology Resources for Lawyers**—(2014–2019)

- Director of Legal Education and Resources
- Editor-in-chief, *Guidelines Regarding the Use of Technology-Assisted Review*
- Lead author, *The New Information Governance Playbook for Addressing Digital Age Threats*

Santa Clara County Bar Association—(2000–2013)

- Member, Board of Trustees (2009–2010)
- Chair, Exec. Committee, High Technology Law Section (2007–2010)

American Bar Association—(2009–2014)

- Science & Technology Section (2009–2014)
- Litigation Section (2013–2014)
- Judicial Division (Lawyers Conference) (2013–2014)

California State Bar—(2008–2010)

- Exec. Committee, Law Practice Management & Technology Section

Special Master Appointments

(Orders, Reports, and Recommendations available on Westlaw)

1. **Deal Genius, LLC v. O2COOL, LLC**, No. 21-cv-2046 (N.D. Ill.); Magistrate Judge Jeffrey Cole; Appointed Special Master on September 23, 2022. *See* 2022 WL 17418892 and 2022 WL 17419522.

Special Master Report No. 1, *Report Re Status Of Dispute Regarding Production Of Certain Emails*, 2022 WL 17418933 (N.D. Ill. Oct. 24, 2022).

Special Master Report No. 6, *Report Re Status of Disputes Over the Production of Emails and the Failure to Preserve Emails*, 2023 WL 2299977 (N.D. Ill. Feb. 17, 2023); *report and recommendations adopted*, 2023 WL 2299976 (N.D. Ill. Feb. 23, 2023).

Special Master Report No. 9, *Report Re Status of Disputes Over the Production of Emails and the Failure to Preserve Emails*, 2023 WL 3445758 (N.D. Ill. Apr. 28, 2023).

Special Master Report No. 11, *Report Re Status of Disputes Over the Production of Emails and the Failure to Preserve Emails*, 2023 WL 3445759 (N.D. Ill. May 8, 2023).

Order Addressing the Parties' Dispute Re Elusion Testing and Additional Search Terms, --- F. Supp. 3d ---, 2023 WL 4556759 (N.D. Ill. 2023).

2. **Porter v. Equinox Holdings, Inc.**, No. RG19009052 (Cal. Super. Ct., Alameda Cty.); Superior Court Judge Paul Herbert; Appointed Expert Advisor on December 16, 2021.

Order *Re Production of Linked Documents in Family Relationships and Privacy Issues Re Production of Relevant Documents*, 2022 WL 887242 (Cal. Super. Mar. 17, 2022).

3. **Shumway v. Wright**, No. 4:19-cv-00058 (D. Utah); District Judge David Nuffer; Appointed Special Master on September 4, 2019. *See* 2019 WL 8135705.

Special Master Report No. 21, *Report and Recommendation on Plaintiffs' Motion for Order of Contempt against Defendant Gary D. Slavens and Award of Attorney Fees and Costs*, 2020 WL 3038052 (D. Utah May 19, 2020); *report and recommendation adopted*, 2020 WL 3037207 (D. Utah June 5, 2020).

Special Master Report No. 17, *Report and Recommendation re Erasure of Google Drive Documents Reflecting Trade Secrets Seized from Defendant Gary D. Slavens*, 2020 WL 1042168 (D. Utah Jan. 28, 2020); *report and recommendation adopted*, 2020 WL 1038014 (D. Utah Feb. 10, 2020).

Special Master Report No. 16, *Report and Recommendation re Erasure of Additional Trade Secret Documents Seized from Defendant Gary D. Slavens*, 2020 WL 1037773 (D. Utah Jan. 13, 2020); *report and recommendation adopted*, 2020 WL 1038152 (D. Utah Jan. 29, 2020).

Special Master Report No. 14, *Report and Recommendation re Erasure of Trade Secret Documents Seized from Defendant Gary D. Slavens*, 2019 WL 8129801 (D. Utah Dec. 17, 2019); *report and recommendation adopted*, 2020 WL 1042036 (D. Utah Jan. 29, 2020).

Special Master Report No. 12, *Report and Recommendation on Additional Null Set Searches re Documents Seized from Defendant Gary D. Slavens*, 2019 WL 8137128 (D. Utah Nov. 25, 2019), *report and recommendation adopted*, 2020 WL 1042211 (D. Utah Jan. 8, 2020).

Special Master Report No. 11, *Report and Recommendation on the Review of Certain Null Set Documents Seized from Defendants James Linn Wright, Audra Wright, and Gary D. Slavens*, 2019 WL 8135308 (D. Utah Nov. 22, 2019), *report and recommendation adopted*, No. 4:19-CV-00058-DN-PK, 2019 WL 8137130 (D. Utah Dec. 16, 2019).

Special Master Report No. 10, *Report and Recommendation on the Disposition of Certain ESI Seized from Defendant Gary D. Slavens*, 2019 WL 8129803 (D. Utah Nov. 19, 2019), *report and recommendation adopted*, 2019 WL 8137130 (D. Utah Dec. 16, 2019).

Special Master Report No. 8, *Report and Recommendation on the Disposition of Information Seized from Defendant Gary D. Slavens*, 2019 WL 8129820 (D. Utah Nov. 4, 2019); *report and recommendation adopted*, 2019 WL 8137130 (Dec. 16, 2019).

Special Master Report No. 7, *Preliminary Conclusions regarding the Records Seized from Defendant Gary Slavens*, 2019 WL 8135701 (D. Utah Oct. 9, 2019).

Special Master Report No. 5, *Report on the Erasure of Information Seized from Defendant James Linn Wright and Defendant Audra Wright*, 2019 WL 8135310 (D. Utah Oct. 1, 2019).

Special Master Report No. 3, *Report and Recommendation on the Disposition of Information Seized from Defendant James Linn Wright and Defendant Audra Wright*, 2019 WL 8129822 (D. Utah Sept. 27, 2019).
Order, *Granting in Part and Denying in Part the Wrights' Motion for Expedited Return of Seized Devices*

or, in the Alternative, Supervised Access to Macbook Pro, 2019 WL 8129821 (D. Utah Sept. 18, 2019).

Special Master Report No. 1, *Status of Searches through Data from Defendants' Seized Computer Devices*, 2019 WL 8137124 (D. Utah Sept. 17, 2019).

Expert Witness and Rule 30(b)(6) Testimony

(2019—Present)

1. **In re Uber Technologies, Inc. Passenger Sexual Assault Litigation**, 3:23-MD-3084-CRB-LJC (N.D. Cal. Dec. 22, 2023). Written declaration in support of opposition to motion to (among other things) compel production of litigation hold and preservation information.
2. **Core Consultants, Inc. v. Ferran**, No. 2021CV31719 (Colo. District Court, Arapahoe Cty., Nov. 7, 2022). Oral testimony during hearing before court-appointed special master supporting inclusion of certain provisions in an ESI protocol regarding search terms and production format.
3. **Fernandez v. Walmart Inc.**, No. RIC1904598 (Cal. Super. Ct, Riverside Cty., Oct. 17, 2022). Written declaration in support of opposition to motion for terminating, issue, evidentiary, and monetary sanctions and/or to compel compliance with the court's prior discovery order.
4. **Schmidt v. Allstate Prop. and Cas. Ins. Co.**, No.: 41D03-1408-CT-00125 (Indiana, Johnson County Super. Ct., Aug. 12, 2022). Written affidavit in support of motion to modify an order compelling defendant to engage in a nationwide production of insurance claims files.
5. **Dominion Voting Systems, Inc. v. Fox News Network, LLC**, No. N21C-03-257 EMD (Delaware Super. Ct., Aug. 5, 2022). Oral testimony in the capacity of a Rule 30(b)(6) witness regarding the nature and extent of plaintiff's efforts to respond to defendant's written discovery requests.
6. **Hogan v. Wal-Mart Stores E., LP**, No. 4:21-cv-78 RLW (E.D. Mo. Mar. 11, 2022), ECF No. 48-2. Written declaration in support of motion for relief from discovery order compelling defendant to produce responsive communications to plaintiff's written discovery request.
7. **Hernandez v. Solorzano**, No. 21STFL06318 (Cal. Super. Ct., Los Angeles Cty., Aug. 17, 2021). Written declaration addressing standard employer practices regarding termination of access to corporate network and devices for departed employees.
8. **Moore v. Westgate Resorts, Ltd.**, No. 3:18-cv-00410 (M.D. Tenn. Nov. 1, 2019), ECF No. 78. Written declaration in support of motion for entry of an ESI protocol to govern discovery issues in the litigation.
9. **Southam & Associates, Inc. v. McClellan**, No. 1604011926 (Utah Fourth Dist. Ct., Mar. 8, 2019). Written declaration in support of motion for sanctions and other discovery relief regarding a litigant's apparent refusal to meet and confer regarding the development of search terms.

ESI and eDiscovery Trainings for the Judiciary

(2013—Present)

1. **2023 National Workshop for Magistrate Judges II—7/11/2023 (Atlanta, GA)**, *"Delete" Uncertainty: Learn the Basics and Beyond on ESI Spoliation*. Training regarding ESI spoliation sanctions under Federal Rule of Civil Procedure 37(e) to a national audience of U.S. Magistrate Judges through the Federal Judicial Center.
2. **2023 National Workshop for Magistrate Judges II—7/10/2023 (Atlanta, GA)**, *A Discussion with*

Magistrate Judges about AI's Impact on Legal Issues They Manage. Training regarding the potential impact of artificial intelligence on civil and criminal issues to a national audience of U.S. Magistrate Judges through the Federal Judicial Center.

3. **2023 National Workshop for Magistrate Judges I—4/18/2023 (San Diego, CA), “Delete” Uncertainty: Learn the Basics and Beyond on ESI Spoliation.** Training regarding ESI spoliation sanctions under Federal Rule of Civil Procedure 37(e) to a national audience of U.S. Magistrate Judges through the Federal Judicial Center.
4. **2023 National Workshop for Magistrate Judges I—4/17/2023 (San Diego, CA), AI is Coming to Your Courthouse: Are You Ready?** Training regarding the potential impact of artificial intelligence on civil and criminal issues to a national audience of U.S. Magistrate Judges through the Federal Judicial Center.
5. **U.S. District Court, Eastern District of Michigan—5/31/2022 (Virtual), Ephemeral Messaging: Understanding the Benefits and Addressing the Risks.** Training regarding the nature of ephemeral messaging and the challenges that it presents for courts in civil litigation.
6. **U.S. District Court, District of Utah—5/4/2022 (Salt Lake City, UT), Ephemeral Messaging: Understanding the Benefits and Addressing the Risks.** Training regarding the nature of ephemeral messaging and the challenges that it presents for courts in civil litigation.
7. **U.S. District Court, Northern District of Illinois—2/9/2022 (Virtual), Ephemeral Messaging: Understanding the Benefits and Addressing the Risks.** Training regarding the nature of ephemeral messaging and the challenges that it presents for courts in civil litigation.
8. **Ohio Courts of Appeals Judges Association Fall Conference—9/1/2021 (Virtual), Discovery of Electronic Materials: New Ohio Civ. R.37(E): Failure to Preserve Electronic Stored Information (ESI).** Delivered training to Ohio State Supreme Court Justices and Appellate Court Judges regarding key appellate issues relating to sanctions arising from the destruction of ESI under new Ohio Rule of Civil Procedure 37(e).
9. **Federal Judicial Center—5/3/2021 (Virtual), Electronically Stored Information and Discovery Misconduct in an Electronic Age.** Provided training to national audience of U.S. District Judges and U.S. Magistrate Judges through the Federal Judicial Center regarding ESI preservation and production issues.
10. **U.S. District Court, District of Utah—10/20/2020 (Virtual), Seizure Orders under the Defend Trade Secrets Act of 2016.** Training regarding key legal and technological considerations regarding the issuance of seizure orders under the Defend Trade Secrets Act of 2016.
11. **2018 Utah District Court Judges Conference—5/17/2018 (St. George, UT), Dealing with Discovery: Technology and ESI Tips for the Digital Age Jurist.** Provided judicial training for Utah state court judges at their annual retreat regarding common ESI preservation and search challenges, together with various recommendations and best practices for addressing those challenges.
12. **U.S. District Court, District of Utah—10/1/2014 (Salt Lake City, UT), Guidelines Regarding the Use of Technology-Assisted Review (TAR).** Training regarding the basics of TAR, along with several strategic and tactical issues that courts and counsel should consider in connection with the use of TAR.
13. **U.S. District Court, District of Utah—9/12/2013 (Salt Lake City, UT), Getting The Basics: Highlights of the Newly Proposed Amendments to the Federal Rules of Civil Procedure.** Training on the proposed amendments to the Federal Rules of Civil Procedure regarding proportionality and sanctions for failures to preserve relevant ESI.

Court Citations to Authored Articles

1. **Deal Genius, LLC v. O2COOL, LLC**, --- F. Supp. 3d ---, 2023 WL 4556759 (N.D. Ill. 2023).
2. **Deal Genius, LLC v. O2COOL, LLC**, No. 21-cv-2046, 2023 WL 2299977, at *3 (N.D. Ill. Feb. 17, 2023).
3. **Deal Genius, LLC v. O2COOL, LLC**, No. 21-cv-2046, 2022 WL 17418933, at *2 (N.D. Ill. Oct. 24, 2022).
4. **DR Distributors, LLC v. 21 Century Smoking, Inc.**, 616 F. Supp. 3d 769, 787 (N.D. Ill. 2022).
5. **DR Distributors, LLC v. 21 Century Smoking, Inc.**, 513 F. Supp. 3d 839, 948, n.49 (N.D. Ill. 2021).
6. **Shumway v. Wright**, No. 4:19-cv-00058-DN-PK, 2019 WL 8137128, *2, n.6 (D. Utah Nov. 25, 2019), *report and recommendation adopted*, 2020 WL 1042211 (D. Utah Jan. 8, 2020).
7. **Shumway v. Wright**, No. 4:19-CV-00058-DN-PK, 2019 WL 8135308, at *3, n.16 (D. Utah Nov. 22, 2019), *report and recommendation adopted*, 2019 WL 8137130 (D. Utah Dec. 16, 2019).
8. **Shumway v. Wright**, No. 4:19-CV-00058-DN-PK, 2019 WL 8135701, at *3, n.3 (D. Utah Oct. 9, 2019).
9. **Shumway v. Wright**, No. 4:19-CV-00058-DN-PK, 2019 WL 8129822, at *5, n.16 (D. Utah Sept. 27, 2019).
10. **Winfield v. City of New York**, No. 15-cv-05236, 2017 WL 5664852, at *10 (S.D.N.Y. Nov. 27, 2017).
11. **Rio Tinto PLC v. Vale S.A.**, 306 F.R.D. 125, 128 (S.D.N.Y. 2015).
12. **United States ex rel. Carter v. Bridgepoint Educ., Inc.**, 305 F.R.D. 225, 237, n.23 (S.D. Cal. 2015).
13. **Quintana v. Claire's Boutiques, Inc.**, No. 13-cv-0368, 2014 WL 234219, at *2, n.13 (N.D. Cal. Jan. 21, 2014).
14. **Lake v. City of Phoenix**, 220 Ariz. 472, 486 (Ct. App.) (Norris, J. *dissent*), *vacated in part*, 222 Ariz. 547 (2009).

Scholarly Articles, Books, Commentaries, and Bar Journal Articles

(2007—Present)

1. **Ephemeral Messaging: Understanding Key Preservation Issues in Civil Litigation**, THE CIRCUIT RIDER: THE JOURNAL OF THE SEVENTH CIRCUIT BAR ASSOCIATION (May 2023) | Author.
2. **The Outsized Impact of Text Messages on Litigation**, FMJA BULLETIN (March 2023) | Author.
3. **Ephemeral Messaging: Understanding Key Preservation Issues in Civil Litigation**, FMJA BULLETIN (Sep. 2022) | Author
4. **Selected eDiscovery and ESI Case Law from 2021-22**, THE CIRCUIT RIDER: THE JOURNAL OF THE SEVENTH CIRCUIT BAR ASSOCIATION (June 2022) | Author.
5. **Navigating Social Media Discovery: What Judges Need to Know About How Lawyers Should Deal with Mass Deletion of Social Media History**, FMJA BULLETIN (June 2022) | Co-Authored with the Hon.

Helen Adams, U.S. Magistrate Judge (Southern District of Iowa) and Leslie Behaunek (Nyemaster Goode).

6. **Navigating Social Media Discovery: Steps Counsel Can Take to Address Mass Deletion of Social Media History**, THE IOWA LAWYER (June 1, 2022) | Co-Authored with the Hon. Helen Adams, U.S. Magistrate Judge (Southern District of Iowa) and Leslie Behaunek (Nyemaster Goode).
7. **Solving the Privilege Conundrum in Discovery**, PRACTICAL LAW (Mar. 4, 2022) (with updates on legal and practical issues affecting privilege log practices since originally published in 2016) | Author.
8. **DTSA Seizure Orders**, PRACTICAL LAW THE JOURNAL (Winter 2022) | Author.
9. **Court Sanctions Defendants For Using Signal To Thwart FTC Investigation**, FMJA BULLETIN (Dec. 2021) | Author.
10. **Proportionality Weaponized: How It Happens And What Can Parties And Courts Do About It**, THE CIRCUIT RIDER: THE JOURNAL OF THE SEVENTH CIRCUIT BAR ASSOCIATION (Sept. 24, 2021) | Author.
11. **Commentary on the Effective Use of Federal Rule of Evidence 502(d) Orders**, 23 SEDONA CONF. J. 1 (forthcoming 2022) | Editor-in-Chief and Contributing Author (The Sedona Conference).
12. **Commentary on Ephemeral Messaging**, 22 SEDONA CONF. J. 435 (2021) | Editor-in-Chief and Contributing Author (The Sedona Conference).
13. **Slack Discovery: Key Issues and Challenges**, PRACTICAL LAW (Sep. 1, 2020) | Author.
14. **Seizure Orders Under the Defend Trade Secrets Act**, 33 UTAH BAR J. 32 (July/Aug 2020) | Co-Authored with the Hon. David Nuffer, U.S. District Judge (District of Utah).
15. **Commentary on ESI Evidence & Admissibility, Second Ed.**, 22 SEDONA CONF. J. 83 (2021) | Editor-in-Chief and Contributing Author (The Sedona Conference).
16. **Slack Discovery: Key Issues and Challenges**, PRACTICAL LAW (Apr. 1, 2020) | Author.
17. **Navigating the Discovery Chess Match through Effective Case Management**, 53 AKRON L. REV. 31 (2019) | Author.
18. **Ephemeral Messaging: Balancing the Benefits and Risks**, PRACTICAL LAW (June/July 2019) | Author.
19. **Primer on Social Media, Second Ed.**, 20 SEDONA CONF. J. 1 (2019) | Editor-in-Chief and Contributing Author (The Sedona Conference).
20. **A New Frontier in eDiscovery Ethics: Self-Destructing Messaging Applications**, 31 UTAH BAR J. 40 (Mar/Apr 2018) | Co-Authored with Keith Call (Snow Christensen & Martineau).
21. **Commentary on Proportionality in Electronic Discovery, Third Ed.**, 18 SEDONA CONF. J. 141 (2017) | Drafting Team Leader and Contributing Author (The Sedona Conference).
22. **The New Information Governance Playbook for Addressing Digital Age Threats**, 3 RICH. J.L. & TECH. ANN. SURVEY (2017) | Co-Author.
23. **Safeguarding The Seed Set: Why Seed Set Documents May Be Entitled To Work Product Protection**, Chapter 9 in Jason R. Baron, Ralph C. Losey & Michael D. Berman, *Perspectives on*

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 28. **Protecting Privilege Claims in Discovery**, 29 UTAH BAR J. 22 (Mar/Apr 2016) | Author.
 29. **Addressing EU Data Protection Laws in Discovery**, PRACTICAL LAW (May 15, 2015) | Author.
 30. **Safeguarding The Seed Set: Why Seed Set Documents May Be Entitled To Work Product Protection**, 8 FED. CTS. L. REV. 1 (2015) | Co-Authored with the Hon. John M. Facciola (ret.), U.S. Magistrate Judge (D.D.C.).
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 33. **Getting Serious: Why Companies Must Adopt Information Governance Measures to Prepare for the Upcoming Changes to the Federal Rules of Civil Procedure**, 20 RICH. J. L. & TECH 5 (2014) | Author.
 34. **A Comprehensive Look at the Newly Proposed Amendments to the Federal Rules of Civil Procedure**, 26 UTAH BAR J. 38 (Sep/Oct 2013) | Author.
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 39. **A New Frontier in Electronic Discovery: Preserving and Obtaining Metadata**, 13 B. U. J. SCI. & TECH. L. 1 (2007) | Author.

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3. **New Circuit Court Opinion Highlights the Need for Enhanced Cyber and Privacy Safeguards**, INNOVATIVE DRIVEN BLOG (Sept. 8, 2023) | Co-Authored with Naheed Bleecker (Innovative Driven).
4. **New Case Law Spotlights the Need for Effective ESI Protocol Practices**, INNOVATIVE DRIVEN BLOG (Aug. 3, 2023) | Author.
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7. **2023 Tech Glossary**, INNOVATIVE DRIVEN BLOG (April 11, 2023) | Author.
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15. **Messaging Apps Raise Tricky E-Discovery Issues**, TECHNOLOGY & MARKETING LAW BLOG (May 16, 2022) | Author.
16. **Selected eDiscovery and ESI Case Law from 2021-22**, THE SEDONA CONFERENCE (Apr. 2022) | Author.
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20. **What Litigants Should Know About New Court Decisions on Categorical Privilege Logs**, LEGALTECH NEWS (Dec. 2, 2021) | Author.

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 26. **New ACC Report Spotlights Correlation between IG Maturity and Discovery Responsiveness**, DRIVEN BLOG (June 30, 2021) | Author.
 27. **Court Rejects In Camera Review, Signals Need for Privilege Log Alternatives**, DRIVEN BLOG (May 27, 2021) | Author.
 28. **New Federal Cases Spotlight 2021's Key Trends in E-discovery**, LEGALTECH NEWS (May 13, 2021) | Author.
 29. **Dispute Over Linked Google Drive Documents Highlights Discovery Challenges with Information Systems**, DRIVEN BLOG (Apr. 27, 2021) | Author.
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 31. **Special Masters: A Cost-Effective Method for Handling eDiscovery**, DRIVEN BLOG (Mar. 29, 2021).
 32. **New ESI Sanctions Order Offers E-Discovery 101 Course for Lawyers**, ACEDS DETROIT CHAPTER NEWSLETTER (Mar. 2021) | Author.
 33. **Court Rejects Slack Production, Spotlights Discovery Pitfalls for Requesting Parties**, DRIVEN BLOG (Feb. 8, 2021) | Author.
 34. **New ESI Sanctions Order Offers E-Discovery 101 Course for Lawyers**, LEGALTECH NEWS (Jan. 28, 2021) | Author.
 35. **Lessons Learned for 2021: Spotlighting the Top eDiscovery Cases from 2020**, DRIVEN BLOG (Jan. 5, 2021) | Author.
 36. **New TAR Case Spotlights Perils with Broad ESI Protocols**, LEGALTECH NEWS (Dec. 14, 2020) | Author.
 37. **Proportionality: Cost Remains The Bottom Line in eDiscovery**, DRIVEN BLOG (Nov. 23, 2020) | Author.
 38. **Terminating Sanctions Order Emphasizes the Need for Safeguards in Disposition Programs**, LEGALTECH NEWS (Oct. 27, 2020) | Author.

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39. **Terminating Sanctions Order Emphasizes the Need for Safeguards to Ensure Disposition Programs are Defensible**, DRIVEN BLOG (Oct. 28, 2020) | Author.
 40. **New TAR Case Affirms Sedona Principle Six, Approves Search Term Pre-Culling**, LEGALTECH NEWS (Sep. 15, 2020) | Author.
 41. **New eDiscovery Case Law Developments in 2020: Native Excel Production without Relevance Redactions, FRCP 37(e) Order Rejecting Inherent Authority, and Denial of Proposed Blanket Production 502(d) Order**, DRIVEN BLOG (Aug. 20, 2020) | Author.
 42. **Three New E-discovery Case Law Developments So Far in 2020**, LEGALTECH NEWS (Aug. 14, 2020) | Author.
 43. **Top European Court Invalidates Privacy Shield, Unsettles Personal Data Transfer Practices under the Standard Contractual Clauses**, DRIVEN BLOG (Aug. 4, 2020) | Co-Author.
 44. **Court Requires Production of Filepath Metadata, Spotlights Importance of eDiscovery Experts**, DRIVEN BLOG (June 23, 2020) | Author.
 45. **California Case Offers Warnings on Ephemeral Messaging**, BLOOMBERG LAW (June 1, 2020) | Author.
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 48. **Understanding and Addressing Discovery Challenges with Slack**, DRIVEN BLOG (Apr. 3, 2020) | Author.
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 50. **Three New Changes to the Revised CCPA Regulations and New CCPA Lawsuits**, LEGALTECH NEWS (Mar. 24, 2020) | Author.
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58. **Sedona Working Group 1 Meeting Spotlights Key E-Discovery Cases from 2019**, LEGALTECH NEWS (Nov. 12, 2019) | Author.
59. **Select Recent Decisions Regarding Federal Rule of Civil Procedure 37(e)**, THE SEDONA CONFERENCE (Oct. 2019) | Author.
60. **New Cases Provide Insights on the FRCP 37(e) “Reasonable Steps to Preserve” Requirement**, LEGALTECH NEWS (Sept. 5, 2019) | Author.
61. **New Cases Spotlight Production Pitfalls in eDiscovery with Slack**, DRIVEN BLOG (July 19, 2019) | Author.
62. **Recent Cases Spotlight the Challenges of Cross-Border Data Protection Laws in eDiscovery**, LEGALTECH NEWS (June 17, 2019) | Author.
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65. **Practical Tips for Lawyers on How to Preserve Relevant Text Messages**, DRIVEN BLOG (Apr. 29, 2019) | Author.
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69. **“Zombie Cookies” and eDiscovery: Baking Privacy into the Proportionality Analysis**, DRIVEN BLOG (Dec. 17, 2018) | Author.
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71. **Judge Parker Reaffirms Rule 502(d) Protections, Rejects ‘Quick Peek’ Procedure**, LEGALTECH NEWS (Oct. 24, 2018) | Author.
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74. **Vegas Court Spotlights the Importance of Custodian Interviews with New ESI Sources**, LEGALTECH NEWS (Aug. 30, 2018) | Author.
75. **Safely Navigating Social Media Discovery with The Sedona Conference Primer on Social Media**, BLOOMBERG BNA and BIG LAW BUSINESS (Aug. 2018) | Co-Authored with Lauren Schwartzreich (Littler, LLP).

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77. **“Follow the Money” and Metrics: A User’s Guide to Proportionality in the Age of e-Discovery**, THE E-DISCOVERY TEAM (Apr. 8, 2018) | Author.
78. **Surfing for Sanctions under Federal Rule of Civil Procedure 37(e)**, DRIVEN BLOG (Mar. 28, 2018) | Author.
79. **The eDiscovery Legacy of Judge Andrew Peck: Cooperative Advocacy and Technology**, DRIVEN BLOG (Mar. 23, 2018) | Author.
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82. **Waymo v. Uber Trade Secret Lawsuit Settles, Provides Guidance on Discovery Strategy**, DRIVEN BLOG (Feb. 9, 2018) | Author.
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92. **Social Media e-Discovery: What You Need to Know before You Preserve**, THE RELATIVITY BLOG (Aug. 15, 2017) | Author.
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